

ORDER NO. 3756

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail Contract 179 (MC2016-63)
Negotiated Service Agreement

Docket No. CP2016-78

ORDER APPROVING AMENDMENT TO A
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued January 17, 2017)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Amendment to Priority Mail Contract 179, with Portions Filed Under Seal, January 5, 2017 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2937, the Commission approved the Priority Mail Contract 179 negotiated service agreement (Existing Agreement).² On January 5, 2017, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On January 6, 2017, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the filing. Notice at 1. The Postal Service asserts that the Amendment will not materially affect the cost coverage of the Existing Agreement. *Id.*

II. COMMENTS

Comments were filed by the Public Representative on January 13, 2017.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. PR Comments at 2. Based on that review, she recommends that the Commission approve the Amendment. *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's

² See Docket Nos. MC2016-63 and CP2016-78, Notice and Order Concerning the Addition of Priority Mail Contract 179 to the Competitive Product List, December 28, 2015 (Order No. 2937).

³ See Docket Nos. CP2016-76, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, January 6, 2017.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Negotiated Service Agreement, January 13, 2017 (PR Comments).

institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment replaces Sections I.E, I.F, I.G (including Table 1), I.H (including Table 2), I.I, and section III of the Existing Agreement. Notice, Attachment A at 1.

The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire four years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁵

The Amendment also contains a provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing Agreement expiring.⁶ During the extension periods, prices will increase as described in the

⁵ Notice, Attachment A at 3. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

⁶ *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within at least seven (7) days of the contract expiring." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; *see also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

Amendment. Notice, Attachment A at 3. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the Existing Agreement, as amended, will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 179 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary